



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

IN THE MATTER OF UPPER FREEHOLD)	ORDER APPROVING EXEMPTION
REGIONAL SCHOOL DISTRICT PETITION)	
FOR AN EXEMPTION FROM MAIN EXTENSION)	
RULES AT <u>N.J.A.C. 14:3-8.8(b) (1)</u>)	DOCKET NO. EO09040319

(SERVICE LIST ATTACHED)

BY THE BOARD:

By this Order, the Board considers a request by Upper Freehold Township Regional School District located in Monmouth County, New Jersey ("Petitioner") for an exemption from the Main Extension Rules pursuant to N.J.A.C. 14:3-8.8(b)(1). This section of the rules provides for an exemption from the cost limits on extensions of service in areas not designated for growth for a project that will provide a significant public good. The Petitioner is constructing a new public middle school in Upper Freehold Township to address over-crowding issues at the existing elementary/middle school. The proposed location of the school is 1252 Yardville-Allentown Road, Allentown, New Jersey 08501. The property is located in a Rural Planning Area (PA-4), not a designated growth area.

Petitioner seeks relief from the rules which would otherwise require the Petitioner to pay the entire cost of installing electric and gas service to the school. The cost from Public Service Electric and Gas ("PSE&G") for installing electric and gas service is \$116,921.90.¹

The Petitioner submits that it is exempt from the requirements for the costs of the extension pursuant to N.J.A.C. 14:3-8.8(b)(1), because the project will provide a significant public good, as described in N.J.A.C. 14:3-8.8(h). N.J.A.C. 14:3-8.8(h) provides that to obtain an exemption based on significant public good, a Petitioner must demonstrate to the Board that all of the following criteria are met: (1) the project or activity served by the extension would provide a significant benefit to the public or to the environment; (2) the project is consistent with smart growth, or that the benefit of the project outweighs the benefits of smart growth; and (3) there is no practicable alternative means of providing the benefit while still complying with this

¹ PSE&G costs to petitioner include \$21,559.10 for temporary electric service to the construction site; \$52,325.72 for electric service; \$25,792.89 for gas service; and \$17,244.19 for electric service to a sewer pump station.

subchapter. In assessing criterion two (2), the Board must consult with the Office of Smart Growth ("OSG") and other State agencies.

The Petitioner presents the following as to each criterion in N.J.A.C. 14:3-8.8(h):

1. Whether the Project or Activity Served by the Extension will Provide a Significant Benefit to the Public or to the Environment

Petitioner argues that the existing elementary/middle school currently exceeds its capacity by approximately 300 students. Petitioner further states the new middle school "will provide a significant benefit to the students and the community by alleviating the over-crowded conditions in the existing elementary/middle school."

2. That the project ... is consistent with smart growth, or that the benefit of the project outweighs the benefits of smart growth. In making this determination, the Board will consult with the Office of Smart Growth and other State agencies

Here, Petitioner argues that the new middle school is being constructed to address overcrowding issues at the existing elementary/middle school. The existing elementary/middle school exceeds capacity by approximately 300 students. The Petitioner has installed six temporary modular classrooms on the current site and rents additional classroom space from Millstone Township School District. The Petitioner also rents gym space at the Robbinsville Field House and transports students to that location for gym class.

3. There is no practicable alternative means of providing the benefit while still complying with this subchapter

Petitioner states that while the new middle school is not located in an area designated for growth, there is a need for a new middle school that would not be practicable in other sites within the Upper Freehold Regional School District boundaries. In selecting the site of the new middle school, Petitioner conducted an extensive search for alternate sites. Petitioner states they considered building the new middle school on the existing elementary/middle school campus but due to space limitations, environmental concerns, and safety concerns it was determined not to be feasible. Petitioner further states they searched for property in the Borough of Allentown which is in a designated Smart Growth area. After conducting an extensive search, it was determined that building the middle school in the Borough of Allentown was not feasible because there was no available land large enough to construct the school. Certain property owners were also not willing sellers. Furthermore, it was determined that all of the property in the Borough of Allentown is either built out or too environmentally constrained to support a new school of any size. Based upon these findings the Upper Freehold Regional School District could only consider locations within Upper Freehold Township, a non-growth area.

The following steps were taken by Board Staff and are part of the record that the Board has reviewed.

Pursuant to the requirement in N.J.A.C. 14:3-8.8(h)(2), Staff consulted with the OSG, and the Department of Environmental Protection ("DEP"). James A. Souder, Interim Executive Director of the Office of Smart Growth, has identified that Upper Freehold Township is located in Planning Area 4, Rural Planning Area as provided by the New Jersey State Development and Redevelopment Plan ("State Plan"). It is not located in an area designated for growth.

Interim Director Souder's June 9, 2009 letter states,

As it relates to providing an exemption in accordance with N.J.A.C. 14:8.8(h), OSG has determined the following:

While the development of a public school in an area not designated for growth is not desirable, the OSG is cognizant of the fact that Upper Freehold Township does not have any designated Smart Growth Areas within its municipal borders. OSG understands the need for additional public school facilities and it encourages Upper Freehold to plan for guiding growth into a center as a means of preserving its vast agricultural resources. However, given the current circumstances, OSG is of the opinion that there is no practicable alternative for building the middle school in a Smart Growth Area.

Staff also consulted with the Department of Environmental Protection Office of Planning and Sustainable Communities ("OPSC"). Bill Purdie responded on July 20, 2009 that

The construction of a new Middle School was the subject of controversy in Upper Freehold Township as the first site intended for construction of the school was found to be outside of a DEP-approved wastewater service area, and the soils onsite were contaminated with high levels of pesticides. As a result, the Upper Freehold Regional School District sought DEP's assistance to screen new sites that would be considered for the Middle School.

[F]or reasons related to environmental conditions, regulatory processes, cost, and Smart Growth principles, NJDEP supported construction of the Middle School at the Breza Road site.

The Breza Road site was recognized by DEP as approved for installation of a sewage collection and treatment system prior to the selection of the site for the new Middle School. This was very significant because since the site was approved for sewage service, it could gain approval to have the sewage flows from development on-site treated by the adjacent Allentown treatment plant (note that flows from the existing Regional School District Campus already are treated in Allentown), not only saving costs that would otherwise be incurred for developing, permitting and operating a new treatment plant, but the site location also made it eligible for a more streamlined DEP/Monmouth County Wastewater Plan revision approval.

The Breza Road site was also favored by DEP as it was already within an approved sewer service area and would not require the construction of new wastewater treatment infrastructure." "The site also is closer to Allentown, a designated Town Center, and though a quarter mile outside the town center boundary (a Smart Growth area), still in walking distance of residences in Allentown, reducing the need for busing.

Consequently, DEP believes that this exemption should be granted as it provides a significant benefit to the public and environment, and that the benefit of the project outweighs the location of the school in a Rural Planning Area.

DISCUSSION:

The Board's jurisdiction over utility extensions is found at N.J.S.A. 48:2-27, which provides that the Board "may ...require any public utility to establish, construct, maintain and operate any reasonable extension," where the extension is: (1) reasonable and practicable; (2) will furnish sufficient business to justify the construction; and (3) when the financial condition of the public utility reasonably warrants the original expenditure. In considering the requested exemption, the Board adopted rules concerning the extension of service at N.J.A.C. 14:3-8.1 et seq.

The Board recognizes the policy interests of this State to provide an education to its children. N.J. Const. art. VIII, § 4, ¶ 1 provides: "The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years." The administrative aspect of this obligation has been historically delegated to local school districts, operating chiefly through local school boards. Robinson v. Cahill, 69 N.J. 449, 458 (1976). "One of the fundamental responsibilities of the state is to provide a public education for its children." Abbott v. Burke, 199 N.J. 140, 140 (2009). While the principals of smart growth would focus future development into areas designated for growth, there is clearly a need for a new middle school. The new middle school is being built to address over-crowding issues at the existing elementary/middle school. The existing elementary/middle school currently exceeds its capacity by approximately 300 students. Furthermore, the Upper Freehold Regional School District is obligated to provide an education to the children of Upper Freehold Township and Allentown Borough. The Board therefore FINDS that the public good served by the new middle school constitutes a public good for purposes of the Main Extension Rules.

The Board has reviewed the recommendation of the OSG, where it notes that the subject property is a non-growth area located in Planning Area 4 or Rural Planning Area. OSG further notes that Upper Freehold Township does not have any designated Smart Growth Areas within its municipal borders and understands the need for additional public school facilities. The Board also reviewed the recommendations of DEP which consulted with Petitioner in selecting the site, and recommends that the Board grant this application. The existing elementary/middle school currently exceeds its capacity by approximately 300 students. The new middle school will provide a significant benefit to the students and the community by alleviating the over-crowded conditions in the existing elementary/middle school. The current situation requires the busing of students for certain programs. The new middle school will provide the classroom and gym facilities needed to stop the current busing to facilities outside the district which disrupts the school's scheduling of classes and increases the carbon footprint of the township. Eliminating

the daily bussing of classes assists in diminishing the carbon emissions, in agreement with New Jersey's Energy Master Plan. Therefore, the Board FINDS that the benefit of building the new Middle School outweighs the benefits of smart growth.

The Upper Freehold Regional School District serves the towns of Upper Freehold Township and the Borough of Allentown. As stated above, Upper Freehold Township does not have any designated Smart Growth Areas within its municipal borders. Smart Growth areas within the Borough of Allentown were examined and found to be unacceptable because there was no available property large enough to accommodate a new school. Furthermore, it was determined that all of the available property was either built out or too environmentally constrained to support a school of any size. Petitioner also considered building the new middle school on the existing elementary/middle school campus but this was determined to be unacceptable because of land constraints, substantial decrease in recreational facilities, potential need to enlarge the storm water management basin, and unsafe traffic conditions. Based upon these findings, Petitioner searched for locations within Upper Freehold Township. Due to several factors, including, the lack of willing sellers and environmental constraints, all but the current site was eliminated from consideration. Additionally, Upper Freehold Township is entirely located in a Planning Area 4 – Rural Planning area and there is no practicable alternative means of providing a new school in a Smart Growth Area. Therefore, the Board FINDS that there is no practical alternative of providing the benefit while still complying with the rules.

As to the remaining statutory requirements, the Board must ascertain that the financial condition of the utility warrants the expenditure and whether the extension will furnish sufficient business to justify the expense. Public Service Electric and Gas was sent a letter on April 22, 2009. Public Service Electric and Gas responded to this request on May 6, 2009 that it has no objection to Upper Freehold Regional School District's requested exemption provided that relief is ordered by the Board.


After reviewing the exemption petition, the Board FINDS that the criteria set out in the rules at N.J.A.C. 14:3-8.8(b)(1) for a project that will provide a significant public good are met.

Specifically, the Board FINDS as follows: (1) the construction of the new middle school in Upper Freehold Township will constitute a significant benefit to the public; (2) that benefit to the public of the extension of electric and gas service to the new middle school outweighs potential negative impacts on smart growth; and (3) because the geographic location of Upper Freehold Township, which is entirely located in a Planning Area 4 – Rural Planning Area, there is no practicable alternative means of providing a new middle school, within the town, while still complying with these rules. Therefore, the Board HEREBY GRANTS the exemption from the Main Extension Rules pursuant to N.J.A.C. 14:3-8.8(b)(1) for an extension of electric and gas service to the new Upper Freehold Regional Middle School located at Block 44, Lot 13, 1252 Yardville-Allentown Road, Allentown, Monmouth County, New Jersey.

Pursuant to N.J.A.C. 14:3-8.8(j)(3), the Board is to determine the distribution of costs for the extension at the time of approval of the exemption based on significant public good. Therefore, the Board HEREBY ORDERS that the distribution of costs of extending electric and gas service to the new Upper Freehold Regional Middle School shall be governed by the requirements at N.J.A.C. 14:3-8.7 for extensions that serve a designated growth area.

DATED: 7/31/09

BOARD OF PUBLIC UTILITIES
BY:

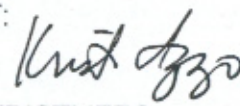

JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER

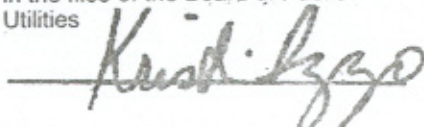

JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
COMMISSIONER

ATTEST:

KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



IN THE MATTER OF UPPER FREEHOLD TOWNSHIP REGIONAL
SCHOOL DISTRICT PETITION FOR AN EXEMPTION
FROM MAIN EXTENSION RULES AT N.J.A.C.14:3-8.8(b) (1)

Docket No. EO09040319

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